THE HONOURABLE SRI JUSTICE NOOTY RAMAMOHANA RAO

W.P.No.15840 of 1998
Date: 22-06-2007

Between:
G.Babu

Petitioner

And

Presiding Officer,
Labour Court, Guntur and others

Respondents

THE HONOURABLE SRI JUSTICE NOOTY RAMAMOHANA RAO

W.P.No.15840 of 1998

ORDER:

1. This writ petition is directed against a portion of the Award passed by the Labour Court in I.D.No.42 of 1993, by which the APSRTC is directed to impose the punishment of deferment of two annual increments with cumulative effect against the writ petitioner.

2. The writ petitioner asserts that he had rendered quality services to the APSRTC as a Driver and wholly due to an unfortunate incident that happened on 19-7-1990 he was penalized too harshly . The petitioner has been assigned to drive a bus belonging to the APSRTC plying on Karipakam route. The writ petitioner asserts that the said bus developed a technical snag and consequently it was detained at a place nearby the Railway Gate at Doravarisatram on its way back and therefore, he had to detain the vehicle there at. However, the management of the APSRTC has viewed this conduct of the writ petitioner as a misconduct. It is asserted that the bus in question was handed over for plying one hour 15 minutes behind the schedule and therefore, the writ petitioner approached the Controller of the Depot with a request to cancel one trip of the bus, which request has been immediately turned down by the Controller as there was heavy traffic of passengers waiting for the bus and hence, the request cannot be accepted.

It is further alleged that the writ petitioner lost his cool and shouted at the Controller for his denial of even such a simple request. It is further alleged that the writ petitioner had uttered in an indecent tone that he knows how to secure cancellation of the trip and therefore, he has designedly stopped the bus in question at the Railway Gate at Dorawarisatram but not due to any technical snag, as alleged by the petitioner. In these set of circumstances, the writ petitioner had been placed under suspension pending enquiry on 3-8-1990 and he has been subjected to disciplinary proceedings thereafter. The Enquiry Officer had concluded the enquiry and filed his report on 8-1-1991 holding the writ petitioner guilty of the misconduct alleged against him. Based upon these findings of the Enquiry Officer, the writ petitioner has been removed from the service by the management. This gave rise to an Industrial Dispute, which was instituted by the writ petitioner in I.D.No.42 of 1993 before the Labour Court.

3. Before the Enquiry Officer, the management has marshalled evidence to demonstrate that a Senior Traffic Inspector of the Corporation took another bus and on his way he found the writ petitioner and the bus entrusted for him stranded at the Railway Gate at Dorawarisatram . When he enquired with the writ petitioner, he was given to understand that due to air lock problem, the bus had been detained. Therefore, the Senior Traffic Inspector appears to have instructed the companion Traffic Inspector-III to attend to the problem so that the Senior Traffic Inspector can proceed further with the passengers whom he was carrying in the other bus. It is further brought out that the Traffic Inspector-III had attended to the sick bus under the charge of the writ petitioner and the same had responded and its engine started functioning in no time. Consequently, the Traffic Inspector-III drove the vehicle back to

Gudur Bus Depot without encountering any problems enroute. It is therefore sought to be established on behalf of the corporation that the bus in question had not developed any technical snag as is made out by the petitioner. On the contrary, he had purposefully detained the vehicle as the Controller had declined to cancel one of the trips at his request. It is therefore, sought to be established by the corporation that the Driver of the bus, the writ petitioner, is guilty of misconduct as the journey of approximately 253 kilometres had been cancelled due to his detaining the bus unnecessarily, apart from, the consequential revenue loss. The APSRTC wanted to establish that it has caused a great dislocation and inconvenience to the passenger public and therefore, the misconduct committed by the writ petitioner deserves to be dealt with sternly This apart the second limb of the charge relating to improper conduct of the writ petitioner by way of shouting at his superior official is also taken exception to. Thus, the corporation tried to sustain the findings recorded by the Enquiry Officer before the Labour Court.

4. A perusal of the Award passed by the Labour Court would disclose that the Labour Court did not find anything wrong with the procedure of the enquiry nor did it find fault with the conclusions drawn by the Enquiry Officer. The Labour Court had in fact found no reasons to disbelieve the evidence marshalled by the management before the Enquiry Officer and therefore, held that the management had established the guilt of the petitioner. But however, taking into consideration and account the long years of service put in by the writ petitioner it had come to the conclusion that the punishment of removal from service for a solitary incidence of misdemeanor on the part of the writ petitioner to be too harsh a punishment and consequently it had ordered for substitution of the punishment of removal with that of stoppage of

two annual grade increments with cumulative effect instead. This part of the Award, is challenged in this writ petition.

5. The learned counsel for the writ petitioner, Sri Bhaskar Rao has strenuously contended that the vehicle in question had been examined by a mechanic, who had found that the engine had gathered lot of dust which may have or may not have caused an air lock problem in the engine and based upon this statement of the mechanic, the learned counsel would urge that the possibility of a technical snag could have been developed enroute, is not ruled out, hence, the conclusion drawn by the Enquiry Officer that the writ petitioner is guilty of purposefully and wantonly detaining the vehicle in question, is an improper finding. He, therefore, contends that the relevant material which has been brought on record in the form of statement by the mechanic, has been ignored by the Enquiry Officer and therefore, the findings in this regard are not sustainable at all. Since the Enquiry Officer's report had formed the basis for the ultimate order of removal from the service, Sri Bhaskar Rao contends that the order of removal is erroneous.

6. Per contra, Sri Ravinder Reddy, the learned standing counsel for the APSRTC would contend that all that the mechanic said was that the presence of the dust in the engine compartment can possibly cause air lock problem and not that it had caused. Whether the air lock problem had been caused at all or not is the actual question. Therefore, when the Traffic Inspector –III had attended to this vehicle and after putting in a minimum effort, the Traffic Inspector-III could bring alive the engine of the vehicle and in fact he drove the vehicle back from Dorawarisatram to Gudur Bus Depot without encountering any problem whatsoever. Hence, in the face of this evidence, contends the learned standing counsel, the allegation of the writ

petitioner that the vehicle has been detained due to a technical snag is disproved.

7. I find force in the submissions made by the learned standing counsel for the APSRTC.

8. The question which is liable to be answered is whether the writ petitioner had purposefully and wantonly detained the bus or the bus had got to be detained because of the immobilization caused to it due to any technical snag.

9. The evidence marshalled by the APSRTC before the Enquiry Officer is clearly bringing out the fact that the engine of the bus in question could be revived by the Traffic Inspector-III with minimum effort and that he could successfully negotiate the journey by driving the said vehicle up to Gudur Bus Depot. Therefore, it is difficult to hold that the findings recorded by the Enquiry Officer are either not correct or perverse. Therefore, the finding recorded that the writ petitioner is guilty of the misdemeanor alleged against him on both the counts is fair and reasonable. It is also worthy to notice that due to the deliberate misconduct attempted by the writ petitioner, he not only caused loss of revenue but has also caused inconvenience to the traveling public. He has no justification in doing so. Hence, the conduct of the writ petitioner is certainly blame-worthy. For the proven misconduct , an appropriate punishment which can serve the purpose of reminding him about his obligation to perform duties correctly and properly has got to be imposed. I consider that the Labour Court had bestowed adequate compassion to the cause of the writ petitioner by ordering for substitution of the punishment with that of stoppage of two annual grade increments with cumulative effect . I do not find any perversity warranting interference with this conclusion of the

Labour Court.

10. However, the learned counsel for the writ petitioner had pointed out that from the time he was placed under suspension pending enquiry on 3-8-1990 he had been paid subsistence allowance only for the period of four months and thereafter he had not been paid subsistence allowance till such time the actual removal order was passed against him. This is a matter where the APSRTC will have to bestow its attention. Any employee placed under suspension is entitled to be paid subsistence allowance in accordance with the Regulations till such time the order of punishment of removal from service is imposed against him. The APSRTC cannot avoid to pay subsistence allowance to the writ petitioner up to the date of imposition of the punishment of removal from the service.

11. I do not find any merit in the writ petition warranting interference and consequently the above writ petition is dismissed but however without costs.

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NOOTY RAMAMOHANA RAO,J

22-06-2007

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THE HONOURABLE SRI JUSTICE NOOTY RAMAMOHANA RAO

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